# JUDGE JONES

BLANK ROME, LLP Attorneys for Plaintiff Jack A. Greenbaum (JG 0039) The Chrysler Building 405 Lexington Ave. New York, NY 10174-0208 (212) 885-5000

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

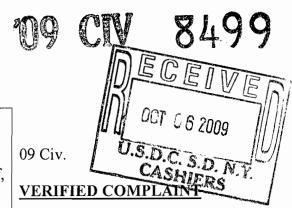
HUA DAO SHIPPING (FAR EAST) LTD.,

Plaintiff.

-against-

CHEONG TAI SHIPPING (HONG KONG) LTD. and CENTRO DE DISTRIBUICAO E NEGOCIOS LUSO,

Defendants.



Plaintiff, HUA DAO SHIPPING (FAR EAST) LTD ("Plaintiff"), by its attorneys Blank Rome, LLP, complaining of the above-named Defendants CHEONG TAI SHIPPING (HONG KONG) LTD. ("CHEONG TAI") and CENTRO DE DISTRIBUICAO E NEGOCIOS LUSO ("CDNL") (collectively, Defendants"), alleges upon information and belief as follows:

- 1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears, and is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. The Court has admiralty jurisdiction under 28 U.S.C. §1333.
  - 2. At all material times, Plaintiff was and now is a foreign corporation.
- 3. At all material times, Defendant CHEONG TAI is and was a foreign corporation organized under the laws of Hong Kong, with its registered office in Hong Kong, and no office or place of business in this Judicial District.

- 4. At all material times, Defendant CDNL is and was a foreign corporation with no office or place of business in this Judicial District.
- 5. On or about May 5, 2009, Plaintiff, entered into a maritime contract of time-charter party of its vessel, the M/V BM CHALLENGE ("the Vessel") with nonparty Asia Power Shipping (HK) Ltd. "Asia Power," as charterer ("the Charter"), for the carriage of a cargo of iron ore from Haldia, India to Rizhao, China.
- 6. As a result of Asia Power's total failure to pay any charter hire whatsoever, Plaintiff issued notices of lien on sub-freights and cargo to a sub-charterer, CHEONG TAI, and a sub-sub-charterer, CDNL.
- 7. In response to the said notices of lien, on July 20, 2009, CHEONG TAI and CDNL agreed in writing to pay the freight they owed Asia Power directly to Plaintiff ("the Agreement"), and did pay said freight.
- 8. Defendants also agreed in the Agreement to pay Plaintiff any demurrage incurred at the discharging port, and agreed to the terms on which demurrage would be earned. A copy of the Agreement is Ex. A. hereto.
- 9. Under a time-charter, such as existed between Plaintiff and Asia Power, compensation is fixed at a daily rate of hire. No demurrage is paid under a time-charter. The agreement between Plaintiff and Defendants for the earning and payment of demurrage was an independent maritime contract directly between Plaintiff and Defendants.
- 10. The Vessel incurred demurrage of US\$493,280.30 at the discharging port of Luanda. A copy of Plaintiff's demurrage invoice and supporting documents, issued pursuant to the terms of the Agreement, is annexed hereto as Ex. B.

- 11. Defendants have failed and refused to pay the demurrage, despite due demand, and Plaintiff should recover a judgment against Defendants jointly and severally in the sum of US\$493,280.30, plus interest and costs.
- 12. Plaintiff intends shortly to commence a law suit against Defendants in Hong Kong. The Courts of Hong Kong routinely award interest and legal fees to the successful party. Plaintiff estimates it will recover interest in the amount of at least US\$88,790 at 6% annually for a period of at least three years, and recoverable legal fees and costs of at least US\$100,000.
- 13. The total amount for which Plaintiff requests an order for the issuance of maritime attachment and garnishment is <u>US\$682,070</u>.
- 14. Defendant cannot be found within this district within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but Defendant is believed to have or will have during the pendency of this action, assets within this district consisting of cash, funds, freight, hire credits in the hands of garnishees in this District, including but not limited to electronic fund transfers.
- 15. Defendant is engaged in the international shipping business, which is almost universally conducted in US Dollars. All cross-boarder U.S. Dollar electronic funds transfers are processed by intermediary banks in the United States, mostly in New York. The Clearing House Interbank Payment System, whose members clear U.S. Dollar transfers via accounts at the Federal Reserve Bank in New York City, represents that its members process 95% of all international U.S. Dollar electronic funds transfers.

### WHEREFORE, Plaintiff prays:

A. That process in due form of law issue against the Defendants, citing them to appear and answer under oath all and singular the matters alleged in the Complaint;

B. That since the Defendants cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all of Defendants' tangible or intangible property or any other funds held by any garnishee in the District which are due and owing or otherwise the property of to the Defendants up to the amount of <u>US\$682,070</u> to secure the Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint.

- C. That this Court appoint a substitute process server;
- D. That this Court award Plaintiff its damages or retain jurisdiction over this matter through the entry of a foreign judgment.
- E. That Plaintiff may have such other, further and different relief as may be just and proper.

Dated: New York, NY October 6, 2009

> Respectfully submitted BLANK ROME, LLP Attorneys for Plaintiff

> > Jack A. Greenbaum (JG 0039)

The Chrysler Building 405 Lexington Ave.

New York, NY 10174-0208

(212) 885-5000

jgreenbaum@blankrome.com

## **VERIFICATION**

Jack A. Greenbaum. deposes and says:

- 1. I am a member of the firm of Blank Rome, LLP, attorneys for Plaintiff.
- I have read the foregoing Complaint and I believe the contents thereof are true. 2.
- 3. The reason this Verification is made by deponent and not by Plaintiff is that Plaintiff is a foreign corporation, having no officers or directors in this District.
- 4. The sources of my information and belief are documents provided to me and statements made to me by representatives of the Plaintiff.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at New York, N. Y. on October 6, 2009.

BLANK ROME LLP Attorneys for Plaintiff Jack A. Greenbaum (JG 0039) The Chrysler Building 405 Lexington Avenue New York, NY 10174-0208 (212) 885-5000

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

HUA DAO SHIPPING (FAR EAST) LTD.,

Plaintiff,

-against-

CHEONG TAI SHIPPING (HONG KONG) LTD. and CENTRO DE DISTRIBUICAO E NEGOCIOS LUSO,

Defendants.

09 Civ.

AFFIDAVIT UNDER SUPPLEMENTAL RULE B AND IN SUPPORT OF REQUEST FOR APPOINTMENT TO SERVE PROCESS

STATE OF NEW YORK )

SS:
COUNTY OF NEW YORK )

JACK A. GREENBAUM, being duly sworn, deposes and says:

1. I am a member of the Bar of this Honorable Court and a member of the firm of Blank Rome, LLP, attorneys for the Plaintiff herein. I am familiar with the circumstances of the complaint and submit this affidavit in support of Plaintiff's request for the issuance of process of maritime attachment and garnishment of the property of defendants, CHEONG TAI SHIPPING (HONG KONG) LTD. and CENTRO DE DISTRIBUICAO E NEGOCIOS LUSO ("Defendants"), foreign corporations, pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

2. Defendants are foreign corporations, with no offices or places of business in this Judicial District.

3. Under my supervision, my office did a search of the New York State Secretary of State, Division of Corporations, the Transportation Tickler, telephone assistance, and a general internet search.

4. In our search, we did not find any listing or reference to Defendants in this judicial district or the state of New York. In the circumstances, I believe Defendants cannot be found within this district.

5. We have been advised that the U.S. Marshal's Service lacks sufficient staff to effect service of Process of Maritime Attachment and Garnishment promptly or economically. I respectfully request that the Court appoint Michael Watson, or any other person appointed by Blank Rome LLP who is over 18 years of age and is not a party to this action, to serve Process of Maritime Attachment and Garnishment and supplemental process upon garnishees in this matter.

6. It is respectfully requested that the aforementioned person, Michael Watson, or any other person appointed by Blank Rome, LLP who is over 18 years of age and not a party to this action, be appointed to effect such service.

JACK A. GREENBAUM

Sworn to before me this

May of October 200

Notary Public

MICHELE GRANITO
Notary Public, State of New York
No. 01GR6202734
Qualified in Richmond County
Commission Expires Mar 23, 20

Shanghai, 20th July 2009

In reference to the charter party signed with Asia Power Hong Kong and their complete breach of contract not having paid the due freight to the owners as per contract conditions and as per notice tendered to them

It has been mutually agreed between

Mr. Umberto Nardi - Huadao Shipping, Chairman

Mr. Li Yin Rui

- representing Cheong Tai Shipping (Hong Kong) Limited

Mr. Mras Lu

- representing Centro De Distribuicao e Negocios Luso-Chines (Xiangai)

That the freight cost for the M/V Challenge from Rizhao to Luanda will be accepted by all parties in reason of Usd.697.000,00.- (sixhundrednintyseventhousand) with conditions of Free Disbursement Account in both load/discharging ports Rizhao/Luanda and with discharging conditions of 1500Mtons per day SHINC conditions; in case of demurrage Usd.10.000,00.- per day or pro rata will be paid to owners immediately after completion of discharge.

NOR to be tendered atdn shinc, and time to count upon tendering.

The freight will be invoiced to Cheong Tai Shipping (Hong Kong) Limited Hong Kong and remitted to Huadao Shipping within 21<sup>st</sup> July 2009.

Vessel will confirm eta Luanda by tomorrow which should be around 23<sup>rd</sup> of July and will wait for appointed vessel's agent at discharging port to whom will be addressed vessel's pre arrival notice. Fully reserved the rights of the owners to proceed against Asia Power.

CHEONG TAI SHIPPING (HONG KONG) LIMITED

Mr. Li Yin Rui

CENTRO DE DISTRIBUCÃO E NEGOCIOS LUSQ-CHINES (XIANGAI)

Mr. Mars Lu

HUADAO SHIPPING (FAR/EAST) LIN

Mr. Umberto Nardi



# Hua Dao Shipping (Far East) Limited Hong Kong

Unit 2506, Singga Commercial Centre, 148 Connaught Road West, Hong Kong. Tel: 852 2385 5397 Fax: 852 2300 1362 Telex: (051) 94078298 hdsl g email: ops@huadaohk.com www.huadaohk.com

## INVOICE

To: Cheong Tai Shipping (Hong Kong) Limited

Invoice no: HL675B

Date: Sept 22, 2009

Re: MV BM Challenge – Loading Cement and Equipment from Rizhao to Luanda on May 24,2009

Amount (USD)

Accrued demurrage at discharge port Luanda (Please refer to attached laytime sheet)

493,280.30

enamiets).

For and on behalf of HUA DAO SHIPPING FAR EAST! LIMITED 宏连航途 有限公司

TOTAL US DOLLARS FOUR HUNDRED NINETY THREE THOUSAND TWO HUNDRED EIGHTY AND CENTS THIRTY ONLY

\*\*This invoice is due on presentation

Please remit via a direct payment order by means of SWIFT MT103 to our USD savings account numbered 00001-204242-008-79 in favour of "Hua Dao Shipping (Far East) Limited" with BNP Paribas, Hong Kong Branch, SWIFT Address: BNPAHKHH, Bank Code: 056

Correspondent Bank: BNP Paribas, New York Branch, SWIFT Address: BNPAUS3N, CHIPS ABA 0768

Remarks: Payment on account of "BM Shipping Italy"

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Wed 29/07/09					1:00:00		
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Frt 7/08/09					1:00:00		ditto
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Tue 11/08/09	0:00.00				1:00.00		dino
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#### NOTICE OF READINESS

To Messrs. Sdv Ami Angola Estrada do cacuaco Ne 288 Luanda - Angola

Gentlemen.			
Please be ad	vised thatBM CHALLENGE		under my command arrived at
Luand	a, Angola	on	24 /07/2009
At 0936	hours and is in every re	spect ready	to lead/discharge the cargo.

The time commences to count in accordance with the terms and conditions of the chaterparty / booking note dated .. 20. Jusy . 2009

> Yours faithfully BM CHALLENGE Master Master

Notice tendered on 24/07/2009 at 0936 Notice accepted on 24/07/2009 at 0936 hours

LIVAFENC Construção Edganharia Lda

Shipper / Consignee / Agent

Original Charterer

Copy Far East Ship Management

Copy: Master file

Copyrights: Far Last Slup Management Limited. Hong Kong, All rights reserved the complianted expression on this manual, in any form is probabiled

1:09-	cv-084	99-BSJ	Docum	ent 1	Filed	10/06/2009	Page 12 of 13
1- Agents AFRITRAMP,	Luanda			<u> </u>		STANDARD STATEMENT OF	FFACTS
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4- Owners / Dis	sponent Owners					5-Vessel berthed	
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8- Cargo						11 Cergo Documents on board	10- Discharging completed
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24.07.2009 at 1	09.36 hrs			19- Notice of readiner As per C/P.			
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13:40 hrs Discharging completed from hold nr 4.
17:10 hrs Discharging completed from hold nr 2, with 1 gang 1 ship crane working.
17:15 hrs Stopped discharging and gang disembarked.
18 45 hrs Resumed discharging from holds nr 2, 3, 4 & 5, with 4 gangs 4 ship cranes working.
18:55 hrs Stopped discharging from hold nr 1, with 1 gang 1 ship crane working.
20:00 hrs Resumed discharging from hold nr 5, with 1 gang 1 ship crane working.
20:00 hrs Stopped discharging from hold nr 5, with 1 gang 1 ship crane working.
21:00 hrs Stopped discharging from hold nr 1,
21:40 hrs Resumed discharging from hold nr 1.
21:40 hrs Resumed discharging from hold nr 1, with 1 gang 1 ship crane working.
24:00 hrs discharging from hold nr 1, with 1 gang 1 ship crane working. 24:00 hrs discharging in progress from holds nr 1, 3, 4 & 5, with 4 gangs 4 ship cranes working.

00:10 hrs Resumed discharging from hold nr 1, with 1 gang 1 ship crane working.

00:20 to 02:10 hrs Resumed discharging from hold nr 2, with 1 gang 1 ship crane working.

00:20 to 03:00 hrs Resumed discharging from hold nr 3, with 1 gang 1 ship crane working.

00:40 to 02:10 hrs Resumed discharging from hold nr 3, with 1 gang 1 ship crane working.

04:00 hrs Resumed discharging from hold nr 1, 2, 3, 4, 8.5.

05:00 hrs All gangs disembarked.

07:40 hrs Resumed discharging from holds nr 1, 2, 3, 4 & 5, with 5 gangs 5 ship cranes working.

09:00 hrs Discharging in progress from hold nr 1, 2, 3, 4 & 5.

09:30 hrs Stopped discharging from hold nr 2, 3, 4 & 5.

10:40 hrs Resumed discharging from hold nr 2, 3, 4 & 5.

10:50 hrs Resumed discharging from hold nr 2, 3, 4 & 5.

10:50 hrs Resumed discharging from hold nr 3, with 1 gang 1 ship crane working.

11:20 hrs Discharging in hrs hold nr 2, 3, 4 & 5.

12:00 hrs Discharging in progress from hold nr 2, 3, 4 & 5.

16:40 hrs Discharging from hold nr 2, 3, 4 & 5.

16:40 hrs Discharging from hold nr 1, 2, 4 & 5.

16:40 hrs Discharging from hold nr 1, 2, 4 & 5.

16:40 hrs Discharging from hold nr 1, 2, 4 & 5.

16:40 hrs Discharging from hold nr 1, 2, 4 & 5.

16:40 hrs Discharging from hold nr 1, 2, 4 & 5.

10:40 hrs Discharging completed from hold nr 1, 2, 4 & 5.

10:50 hrs Resumed discharging from hold nr 2, 8, 4, 10 frucks). 18.09.2009 FRIDAY 00:15 to 02:15 hrs. Resumed discharging from hold nr 1 , 2 & 4, no trucks. 19.09.2009 SATURDAY 00 15 to 02:15 hrs. Resumed discharging from hold nr 1, 2, 8, 4, not 02:30 to 03:30 hrs. No discharging from hold nr 1, 2, 8, 4, no trucks. 04:00 to 05:00 hrs. No discharging from hold nr 1, 2, 8, 4, no trucks. 05:00 to 07:30 hrs. Break time. 07:30 hrs. Resume discharging from hold nr 2, 8, 4, no trucks. 07:30 hrs. Resume discharging from hold nr 2, 8, 4, no trucks. 12:00 to 13:00 hrs. Break time. 14: 35 hrs. Discharging completed from hold nr 2, 17:10 hrs. Resumed discharging from hold nr 1, 8, 4, 24:00 hrs. Discharging in progress from hold nr 1, 8, 4. 10 300 Mts 00:00 hrs Discharging in progress from hold nr 1 , & 4 05:00 Stopped discharging . 07e 40 hrs Resumed discharging from hold nr 1 , & 4 08:00 Discharging in progress from hold nr 1 & 4 . 12.489748. Mis 08:00 hrs Remaining 965.082 Mis of cargo on board 20.09.2009 SUNDAY 11:12 hrs Discharging completed hold in 1.
12:00 to 12:30 hrs Lunch break.
16:45 hrs Completed discharging hold in 4.
16:45 hrs Completed discharging hold in 4.
16:45 hrs Completed all discharging operation.
16:45 to 24:00 hrs No pilot available. 13.454 83 Mts 08.15 hrs Agent and Port Authorities on board 08.55 hrs Outward clearance granted 09:20 hrs Agent and Port Authorities disembarked. より: 24 hrs Pilot on board 21.09.2009 Monday U 9 : 3 6hrs Vessel cast off. General remarks: Draft on departure Fwd 3.62 m Aft:6.50 Bunkers on departure F.O 647 2: Mions D.O 32.74 Mions L.O.14.07 ETA next port: 30.09,2009 **BM CHALLENGE** Name & signature (Mast Place and date Port of Luanda, 5M terminal.

20.09.2009 Name & signature (Agents)

. , . . .

TARKO Captain. Name & signature ( For

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Master

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